

§ 313.124

ten years after the FDIC's right of action accrues;

(c) The FDIC has made reasonable efforts to obtain payment of the debt, in that it has:

(1) Submitted the debt to FMS for collection by administrative offset and complied with the provisions of 31 U.S.C. 3716(a) and related regulations;

(2) Notified, or has made a reasonable attempt to notify, the debtor that the debt is past-due, and unless repaid within 60 days after the date of the notice, will be referred to FMS for tax refund offset;

(3) Given the debtor at least 60 days to present evidence that all or part of the debt is not past-due or legally enforceable, considered any evidence presented by the debtor, and determined that the debt is past-due and legally enforceable; and

(4) Provided the debtor with an opportunity to make a written agreement to repay the debt; and

(d) The debt is at least \$25.

§ 313.124 Pre-offset notice and consideration of evidence.

(a) For purposes of § 313.123(c)(2), the FDIC has made a reasonable effort to notify the debtor if it uses the current address information contained in its records related to the debt. The FDIC may, but is not required to, obtain address information from the IRS pursuant to 26 U.S.C. 6103(m)(2), (4), (5).

(b) For purposes of § 313.123(c)(3), if evidence presented by a debtor is considered by an agent of the FDIC, or other entities or persons acting on behalf of the FDIC, the debtor must be accorded at least 30 days from the date the agent or other entity or person determines that all or part of the debt is past-due and legally enforceable to request review by an officer or employee of the FDIC of any unresolved dispute. The FDIC must then notify the debtor of its decision.

§ 313.125 No requirement for duplicate notice.

Where the director has previously given a debtor any of the required notice and review opportunities with respect to a particular debt, the Director is not required to duplicate such notice

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and review opportunities prior to initiating tax refund offset.

[71 FR 75661, Dec. 18, 2006]

§ 313.126 Referral of past-due, legally enforceable debt.

The FDIC shall submit past-due, legally enforceable debt information for tax refund offset to FMS, as prescribed by FMS. For each debt, the FDIC will include the following information:

(a) The name and taxpayer identification number (as defined in 26 U.S.C. 6109) of the debtor;

(b) The amount of the past-due and legally enforceable debt;

(c) The date on which the debt became past-due; and

(d) The designation of FDIC as the agency referring the debt.

[67 FR 48527, July 25, 2002. Redesignated at 71 FR 75661, Dec. 18, 2006]

§ 313.127 Correcting and updating referral.

If, after referring a past-due legally enforceable debt to FMS as provided in § 313.125, the FDIC determines that an error has been made with respect to the information transmitted to FMS, or if the FDIC receives a payment or credits a payment to the account of the debtor referred to FMS for offset, or if the debt amount is otherwise incorrect, the FDIC shall promptly notify FMS and make the appropriate correction of the FDIC's records. FDIC will provide certification as required under § 313.123 for any increases to amounts owed. In the event FMS rejects an FDIC certification for failure to comply with § 323.123, the FDIC may resubmit the debt with a corrected certification.

[67 FR 48527, July 25, 2002. Redesignated at 71 FR 75661, Dec. 18, 2006]

§ 313.128 Disposition of amounts collected.

FMS will transmit amounts collected for past-due, legally enforceable debts, less fees charged under this section, to the FDIC's account. The FDIC will reimburse FMS and the IRS for the cost of administering the tax refund offset program. FMS will deduct the fees from amounts collected prior to disposition and transmit a portion of the fees deducted to reimburse the IRS for